

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

HERMINE RICKETTS and
LAURENCE “TOM” CARROLL,
a married couple,

CASE NO.: 13-36012 CA
CIVIL DIVISION: 01

Plaintiffs,

v.

VILLAGE OF MIAMI SHORES, FLORIDA;
MIAMI SHORES CODE ENFORCEMENT
BOARD; ROBERT VICKERS,
in his official capacity as chairman of the
Miami Shores Code Enforcement Board;
BARRY ASMUS, ROD BUENCONSEJO,
JOHN PATNIK, BARRY PERL, MANNY
QUIROGA, and BOB SMITH, in their
official capacities as members of the Miami
Shores Code Enforcement Board; and
ANTHONY FLORES, in his official capacity
as Miami Shores Code Enforcement Supervisor,

Defendants.

PLAINTIFFS' COMPLAINT

1. This is a civil rights lawsuit to vindicate the rights of Hermine Ricketts and her husband, Laurence Carroll, who seek nothing more than to grow vegetables on their own property for their own consumption. They are unable to do so because the Village of Miami Shores prohibits residents from maintaining vegetable gardens in their front yards. This front-yard vegetable garden ban violates the right of property owners to make peaceful and productive use of their property to feed themselves and their families—a right protected by the Inalienable Rights Clause of the Florida Constitution. It likewise violates the Right of Privacy Clause, which protects the right of citizens to make inherently intimate decisions about what foods they grow and consume on their own property. Finally, the ban violates the Equal Protection Clause

and the substantive protections of the Due Process Clause of the Florida Constitution. This Court should accordingly declare the ban unconstitutional and enjoin its enforcement so that residents of Miami Shores can be truly free to provide for themselves and their families.

JURISDICTION AND VENUE

2. Plaintiffs—wife and husband Hermine Ricketts and Laurence Carroll—bring this civil rights lawsuit pursuant to the Declaratory Judgments Act, Fla. Stat. §§ 86.011–.111, for violations of the Inalienable Rights, Right of Privacy, Due Process, and Equal Protection Clauses of the Florida Constitution.

3. Plaintiffs seek declaratory and injunctive relief against a Village of Miami Shores ordinance that provides, “Vegetable gardens are permitted in rear yards only.” Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e).

4. This Court has jurisdiction under Fla. Stat. §§ 26.012(3), 86.011, and 86.061.

5. Pursuant to Fla. Stat. § 47.011, venue is proper in this circuit because all Defendants reside in Miami-Dade County and Plaintiffs’ causes of action accrued there.

PARTIES

6. Plaintiff Hermine Ricketts is a Florida citizen, a resident of Miami Shores, Florida, and the wife of Plaintiff Laurence Carroll. For approximately 17 years, she and her husband grew vegetables in the front yard of their Miami Shores home in order to feed themselves. Because of Miami Shores’ ban on front-yard vegetable gardens, however, they had to uproot their vegetables in August 2013.

7. Plaintiff Laurence Carroll, who goes by “Tom” and is referred to as such in this Complaint, is a Florida citizen, a resident of Miami Shores, Florida, and the husband of Plaintiff Hermine Ricketts. For approximately 17 years, Hermine and Tom grew vegetables in the front

yard of their Miami Shores home in order to feed themselves. Because of Miami Shores' ban on front-yard vegetable gardens, however, they had to uproot their vegetables in August 2013.

8. Defendant Village of Miami Shores ("Miami Shores") is a municipality incorporated pursuant to Chapter 165 of the Florida Statutes.

9. Defendant Miami Shores Code Enforcement Board is a local government code enforcement board appointed and organized under Fla. Stat. §§ 162.01–.13. It is charged with conducting enforcement proceedings for violations of Miami Shores' zoning ordinances.

10. Defendant Robert Vickers is the chairman of the Miami Shores Code Enforcement Board. Mr. Vickers is sued in his official capacity.

11. Defendant Barry Asmus is a member of the Miami Shores Code Enforcement Board. Mr. Asmus is sued in his official capacity.

12. Defendant Rod Buenconsejo is a member of the Miami Shores Code Enforcement Board. Mr. Buenconsejo is sued in his official capacity.

13. Defendant John Patnik is a member of the Miami Shores Code Enforcement Board. Mr. Patnik is sued in his official capacity.

14. Defendant Barry Perl is a member of the Miami Shores Code Enforcement Board. Mr. Perl is sued in his official capacity.

15. Defendant Manny Quiroga is a member of the Miami Shores Code Enforcement Board. Mr. Quiroga is sued in his official capacity.

16. Defendant Bob Smith is a member of the Miami Shores Code Enforcement Board. Mr. Smith is sued in his official capacity.

17. Defendant Anthony Flores is the Code Enforcement Supervisor for Miami Shores. In that capacity, he oversees the Miami Shores Code Enforcement Department, which is charged with enforcing the zoning ordinances of Miami Shores and instituting enforcement proceedings

for violations. Mr. Flores has direct authority over Code Enforcement Department personnel and the responsibility and practical ability to ensure Miami Shores' zoning ordinances are enforced in accordance with the Florida Constitution. Mr. Flores is sued in his official capacity.

STATEMENT OF FACTS

HERMINE AND TOM'S VEGETABLE GARDEN

18. Plaintiffs Hermine Ricketts and Tom Carroll were married in 1991 in Miami-Dade County.

19. In 1993, Hermine and Tom purchased their current home, a modest single-family residence, at 53 Northeast 106th Street in Miami Shores, where they have resided for the past twenty years.

20. Hermine and Tom have long been conscientious about how and what they eat. They desire a vegetable-heavy diet, want their produce to be free of pesticides and artificial fertilizers, and prefer unique vegetable varieties not commonly available from grocery stores.

21. Accordingly, shortly after they purchased their home, Hermine and Tom decided to grow their own vegetables.

22. Hermine and Tom's backyard, however, is located on the north side of their property, an area that is heavily shaded during South Florida's peak planting season of September through April.

23. Shortly after they moved into their home, Hermine and Tom attempted to grow vegetables in their back yard but were unsuccessful because of the lack of sunlight.

24. Accordingly, in 1996, Hermine and Tom began growing vegetables, along with fruits and other plants, in the front yard of their home. They continued doing so through August 2013.

25. Hermine and Tom grew these vegetables for their own consumption. They never sold any of the vegetables but did share them from time to time with family and friends.

26. In recent years, Hermine and Tom's front-yard vegetable garden provided them with their entire vegetable intake and accounted for no less than half of their overall food consumption.

27. Hermine and Tom did not use pesticides or artificial fertilizers in their front-yard vegetable garden.

28. By growing vegetables in their front yard, Hermine and Tom ensured they had full knowledge of the source of the vegetables they ate, from planting to consumption. As a result, they were assured that the vegetables they consumed were planted, grown, harvested and processed in accordance with their desired practices. This benefit is entirely unique to homegrown vegetables and cannot be duplicated by purchasing or obtaining vegetables through other means.

29. During the time that Hermine and Tom maintained their front-yard vegetable garden, they were able to affordably grow approximately 75 different varieties of vegetables.

30. Hermine and Tom also grew—and continue to grow—fruits and berries in their front yard.

31. Many of the vegetables Hermine and Tom once grew, such as nearly a dozen varieties of Asian cabbage, are not available in grocery stores like Publix or Whole Foods, or even at farmers' markets or specialty stores.

32. During the time that Hermine and Tom maintained their front-yard vegetable garden, they rarely had the desire or the need to purchase groceries from retail stores. In the rare instances when they did go grocery shopping, their purchases were limited to items that could not be grown in their front yard, such as condiments and fish.

33. Hermine and Tom's front-yard vegetable garden provided them with a nutritionally superior food-source. By shortening the period between harvest and consumption to as little as a few minutes, they were able to maximize the nutritional value of each item they consumed. Such a benefit is impossible to mimic with store-bought vegetables, which are often harvested days or weeks before they are offered to the consumer.

34. Hermine and Tom's front-yard vegetable garden provided them with a food source that guaranteed unparalleled freshness and, as a result, superior taste.

35. Hermine and Tom's front-yard vegetable garden also allowed them to eliminate food waste, as they never had need to remove from the garden any more than they intended to eat.

36. Hermine and Tom's front yard has been, and could be again, a viable source for affordable and nutritious food, free of pesticides and artificial fertilizers.

37. Hermine and Tom's front-yard vegetable garden was a vibrant and colorful accoutrement to their home and community, and Hermine often received compliments on its beauty from neighbors and passers-by.

38. Most of those compliments came while Hermine was outside tending the garden, a daily labor of love which entailed a variety of regular maintenance, such as weeding, pruning, watering, and planting.

39. The daily upkeep of the garden provided Hermine and Tom with a welcomed source of regular exercise, healthy doses of sunshine, and solace. Health and weather permitting, Hermine tended the garden in some respect every day.

40. In addition to maintaining a well-kept garden, Hermine and Tom took pride to create a space that was as beautiful as it was functional.

41. For the duration of the time that Hermine and Tom grew vegetables in their front yard, they refrained from growing items that would reach sizes that could impede ingress or egress to their property, inhibit access to the mailbox area, or obstruct views of their address numbers.

42. In the seventeen years that Hermine and Tom grew vegetables in their front yard, they never received a complaint about the existence or appearance of their vegetable garden.

43. Until May 2013, Hermine and Tom never received a single letter, notice, or citation from Miami Shores Village requesting or demanding that they remove any vegetables from their front yard.

MIAMI SHORES' BAN ON FRONT-YARD VEGETABLE GARDENS

44. On March 19, 2013, the Miami Shores Village Council repealed Miami Shores' former zoning code and adopted a new zoning code. The new zoning code is codified in Part II, Appendix A, of the Miami Shores Code of Ordinances.

45. The former zoning code provided that “[v]egetable gardens are permitted in rear yards.”

46. The new zoning code provides that “[v]egetable gardens are permitted in rear yards *only*.” Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) (emphasis added).

47. The new zoning code does not prohibit property owners from growing fruit, berries, or flowering plants other than vegetables in their front yards.

48. Violating the prohibition on vegetable gardens in front yards can result in fines as high as \$250 per day. *See* Miami Shores, Fla., Code of Ordinances Part II, ch. 2, art. IV, § 2-81(b).

**MIAMI SHORES' CRACKDOWN AND FORCED DESTRUCTION OF HERMINE AND TOM'S
VEGETABLE GARDEN**

49. On May 8, 2013—less than two months after the new zoning code was adopted—an inspector from the Miami Shores Code Enforcement Department observed Hermine and Tom's vegetable garden and determined it was in violation of the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e). The Code Enforcement Department opened an enforcement case against Hermine and Tom that same day.

50. The Code Enforcement Board held hearings in Hermine and Tom's enforcement case on July 11 and August 1, 2013.

51. At the August 1, 2013, hearing, the Code Enforcement Board concluded that Hermine and Tom were in violation of the ban on front-yard vegetable gardens and ordered them to correct the violation by August 31, 2013. Failure to do so, the Board's order noted, would result in fines of \$50 per day.

52. Although Hermine and Tom were required to remove vegetables from their front yard, they were not required to remove fruits and berries.

53. On August 30, 2013, Hermine and Tom filed a notice of appeal of the Board's August 1, 2013, order in the Miami-Dade Circuit Court.

54. Unable to afford or stomach the fines that would begin accruing the following day, Hermine and Tom removed the vegetables from their front yard on August 31, 2013, and requested a re-inspection of their property immediately thereafter.

55. On September 4, 2013, Defendant Anthony Flores sent an email to Hermine and Tom confirming that the violation was corrected and, on October 22, 2013, Hermine and Tom learned that the code enforcement case against them had been formally closed.

56. Accordingly, on October 31, 2013, Hermine and Tom filed a voluntary dismissal of their appeal of the Code Enforcement Board's order.

57. The Miami-Dade County Circuit Court dismissed Tom and Hermine's appeal on November 5, 2013.

58. Although Tom and Hermine are now in compliance with Miami Shores' ban on front-yard vegetable gardens, they wish to resume growing vegetables in their front yard and, but for the ban, would do so immediately.

59. Florida's main growing season extends from late fall to early spring. Unless this Court resolves this matter swiftly, Hermine and Tom will not have a winter/spring vegetable harvest for the first time in 17 years.

60. Though there is a peak planting season, Florida's temperate climate allows for the growing of vegetables year-round, including the summer. Thus, but for the ban on their vegetable garden, Hermine and Tom would immediately resume growing vegetables at any time of the year if this Court rules favorably.

HARM TO HERMINE AND TOM

61. Hermine and Tom have been and continue to be harmed by Miami Shores' ban on front-yard vegetable gardens.

62. As a result of the ban, Hermine and Tom are prohibited from making peaceful and productive use of their own property to feed themselves.

63. Hermine and Tom are likewise deprived of what had been the sole source of their vegetables and of at least half of their overall diet.

64. The front-yard vegetable garden ban also denies Hermine and Tom the ability to share vegetables with their friends and family, including Hermine's mother, an elderly woman dependent on social security for all of her needs.

65. As a result of the ban, Hermine and Tom are forced to expend substantial amounts of money to purchase vegetables from grocery stores—far more money than the cost of growing such vegetables themselves. They are also forced to spend time and money traveling to and from grocery stores, which they did not have to do before.

66. Because of the ban, Hermine and Tom are unable to obtain many of the same vegetables they once grew in their front yard, as those varieties are either unavailable at grocery stores or are cost-prohibitive when available. As a direct consequence, Hermine and Tom are forced to substantially alter their diets.

67. Hermine and Tom are no longer able to limit their stock of harvested vegetables to only those items they expect to consume in the immediate future. Consequently, they have spent, and continue to spend, money on fresh vegetable items that ultimately go to waste because they spoil before they can be eaten.

68. Because of the ban, Hermine and Tom must rely on store-bought vegetables that are harvested long before they are made available for purchase and therefore are less nutritious and less fresh by the time they are consumed.

69. Hermine and Tom are also deprived of knowing the source of their vegetables and the practices used in their production. As a result, they are forced to consume vegetables of unknown origins, thereby raising one of the major concerns that led them to grow their own vegetables in the first place.

70. Finally, because of Miami Shores' front-yard vegetable garden ban, Hermine and Tom are deprived of a hobby that provided physical exercise, solace, independence, and autonomy.

71. In sum, Miami Shores' ban on front-yard vegetable gardens forces Hermine and Tom to replace something they once provided for themselves with an alternative that is inconvenient, less nutritious, unenjoyable, and much, much more expensive.

CONSTITUTIONAL VIOLATIONS

CLAIM I: INALIENABLE RIGHTS CLAUSE

72. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

73. The Inalienable Rights Clause of Article I, section 2, of the Florida Constitution provides that “[a]ll natural persons . . . have inalienable rights, among which are the right . . . to pursue happiness . . . and to acquire, possess and protect property.”

74. The rights “to pursue happiness” and “to acquire, possess and protect property” are fundamental rights.

75. The rights “to pursue happiness” and “to acquire, possess and protect property” include the right of a person to use her property peacefully and productively to feed herself and her family.

76. By prohibiting front-yard vegetable gardens, Miami Shores is violating the right of persons, including Hermine and Tom, to make peaceful and productive use of their property to feed themselves and their families.

77. Miami Shores' ban on front-yard vegetable gardens deprives Hermine and Tom of the source of their sustenance. It also imposes substantial financial costs on them, forcing them to purchase vegetables from other sources rather than providing for themselves from their own land.

78. Defendants have no compelling, substantial, or even legitimate interest for the front-yard vegetable garden ban.

79. The ban on front-yard vegetable gardens is not necessary to achieve, narrowly tailored to achieve, or rationally related to any compelling, substantial, or legitimate governmental interest.

80. On its face and as applied to Hermine and Tom, the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) violates the Inalienable Rights Clause of Article I, section 2, of the Florida Constitution.

81. Hermine and Tom have no other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

82. Unless the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) is declared unconstitutional and permanently enjoined, Hermine and Tom will continue to suffer great and irreparable harm.

CLAIM II: RIGHT OF PRIVACY CLAUSE

83. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

84. The Right of Privacy Clause of Article I, section 23, of the Florida Constitution provides, in relevant part, that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life.”

85. The “right to be let alone and free from governmental intrusion into the person’s private life” is a fundamental right.

86. The “right to be let alone and free from governmental intrusion into the person’s private life” includes the right of a person to make inherently intimate decisions about what foods to grow and consume on her own property and to provide to her family.

87. By prohibiting front-yard vegetable gardens, Miami Shores is violating the right of persons, including Hermine and Tom, to make inherently intimate decisions about what foods to grow and consume on their own property and to provide to their families.

88. Miami Shores' ban on front-yard vegetable gardens deprives Hermine and Tom of their preferred source of sustenance and of the ability to choose the foods they eat. It forces them to purchase vegetables from grocery stores or some other provider rather than providing for themselves. It further deprives them of the variety, nutrients, freshness, and taste of the vegetables they would prefer to consume or provide to their families. Finally, it deprives them of the ability to consume only those vegetables that they know to have been grown and harvested in a manner with which they are comfortable.

89. Defendants have no compelling, substantial, or even legitimate interest in banning front-yard vegetable gardens.

90. Prohibiting front-yard vegetable gardens is not necessary to achieve, narrowly tailored to achieve, or rationally related to any compelling, substantial, or legitimate governmental interest.

91. On its face and as applied to Hermine and Tom, the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) violates the Right of Privacy Clause of Article I, section 23, of the Florida Constitution.

92. Hermine and Tom have no other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

93. Unless the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) is declared unconstitutional and permanently enjoined, Hermine and Tom will continue to suffer great and irreparable harm.

CLAIM III: DUE PROCESS CLAUSE

94. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

95. The Due Process Clause of Article I, section 9, of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.”

96. The Due Process Clause has a substantive component that protects, among other things, the right to be free from arbitrary and unreasonable governmental interference.

97. Miami Shores’ ban on front-yard vegetable gardens is arbitrary and unreasonable.

98. Defining permitted and excluded plants for a yard based on their edibility is arbitrary and irrational.

99. A blanket ban on vegetable gardens in front yards is wholly unreasonable.

100. Defendants have no compelling, substantial, or even legitimate interest in banning front-yard vegetable gardens.

101. Banning front-yard vegetable gardens is not necessary to achieve, narrowly tailored to achieve, or rationally related to any compelling, substantial, or legitimate governmental interest.

102. On its face and as applied to Hermine and Tom, the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) violates the Due Process Clause of Article I, section 9, of the Florida Constitution.

103. Hermine and Tom have no other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

104. Unless the front-yard vegetable ban set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) is declared unconstitutional and permanently enjoined, Hermine and Tom will continue to suffer great and irreparable harm.

CLAIM IV: EQUAL PROTECTION CLAUSE

105. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

106. The Equal Protection Clause of Article I, section 2, of the Florida Constitution, provides that “[a]ll natural persons, female and male alike, are equal before the law.”

107. The Equal Protection Clause requires that government treat similarly-situated persons similarly.

108. Miami Shores’ ban on front-yard vegetable gardens treats similarly-situated persons differently.

109. Miami Shores’ ban on front-yard vegetable gardens creates an arbitrary legal distinction between persons who grow vegetable plants in their front yards and persons who grow other plants in their front yards.

110. Miami Shores’ ban on front-yard vegetable gardens creates an arbitrary legal distinction between persons who grow plants that bear vegetables in their front yards and persons who grow plants that bear fruit or berries in their front yards.

111. Miami Shores’ ban on front-yard vegetable gardens creates an arbitrary legal distinction between persons who grow flowering vegetable plants in their front yards and persons who grow other flowering plants in their front yards.

112. Defendants have no compelling, substantial, or even legitimate interest for treating property owners who grow vegetables differently than those who grow other plants.

113. Banning front-yard vegetable gardens is not necessary to achieve, narrowly tailored to achieve, or rationally related to any compelling, substantial, or legitimate governmental interest.

114. On its face and as applied to Hermine and Tom, the front-yard vegetable ban set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) violates the Equal Protection Clause of Article I, section 2, of the Florida Constitution.

115. Hermine and Tom have no other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

116. Unless the front-yard vegetable ban set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e) is declared unconstitutional and permanently enjoined, Hermine and Tom will continue to suffer great and irreparable harm.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. A declaratory judgment that the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e), on its face and as applied to Hermine and Tom, violates the Inalienable Rights Clause of the Florida Constitution;

B. A declaratory judgment that the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e), on its face and as applied to Hermine and Tom, violates the Right of Privacy Clause of the Florida Constitution;

C. A declaratory judgment that the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e), on its face and as applied to Hermine and Tom, violates the Due Process Clause of the Florida Constitution;

D. A declaratory judgment that the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e), on its face and as applied to Hermine and Tom, violates the Equal Protection Clause of the Florida Constitution;

E. A preliminary and permanent injunction prohibiting Defendants from enforcing the ban on front-yard vegetable gardens set forth in Miami Shores, Fla., Code of Ordinances Part II, app. A, art. V, div. 17, § 536(e);

F. One dollar in nominal damages;

G. Reasonable costs and attorneys' fees; and

H. Such other legal or equitable relief as this Court may deem appropriate and just.

Dated this 18th day of November, 2013.

Respectfully submitted,

By: /s/ Ari Simon Bargil
Ari Bargil (FL Bar No. 71454)
INSTITUTE FOR JUSTICE
999 Brickell Avenue, Suite 720
Miami, FL 33131
Tel: (305) 721-1600
Fax: (305) 721-1601
Email: abargil@ij.org

Michael Bindas (WA Bar No. 31590)*
INSTITUTE FOR JUSTICE
10500 Northeast 8th Street, #1760
Bellevue, WA 98004
Tel: (425) 646-9300
Fax: (425) 990-6500
Email: mbindas@ij.org

* Application for Admission *Pro Hac Vice* filed concurrently with this document.